

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :

- V - :

DERICK OPPONG :

Defendant. :

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**AFFIRMATION**

**08 Cr. 143 (NRB)**

I, Robert M. Baum, hereby affirm under penalties of perjury,  
pursuant to 28 U.S.C. § 1746, as follows:

1. I am an assistant Federal Defender with the Federal  
Defenders of New York and was previously assigned to represent  
defendant Derick Oppong in this case.

2. I make this declaration in support of Derick Oppong's  
motion to suppress physical evidence and statements.

3. All statements herein are made upon information and  
belief unless otherwise indicated.

4. I have reviewed documents and records provided by the  
Government and conducted independent investigation into the facts  
and circumstances surrounding this case.

5. Derick Oppong is charged in the instant indictment with  
one count of possession of a firearm after having previously been  
convicted of a felony punishable by imprisonment for a term  
exceeding one year. See Indictment, Defense Exhibit A.

6. On or about December 23, 2007, at approximately 12:45  
A.M., Mr. Oppong left his apartment and was walking down the  
staircase within his building. Oppong Affirmation ("Aff.") at ¶3

7. He observed some men who were in plain clothes walking up the stairway toward him. Aff. ¶ 3.

8. He became frightened and started to run up the stairway. Aff. ¶ 4.

9. When he reached the sixth floor, one of the men grabbed him from behind and wrestled him to the ground, holding him there while he searched him. Aff. ¶¶'s 5 and 7.

10. He later learned that this man was a police officer. Aff. ¶ 3.

11. As a result of the search, a firearm was recovered. Aff. ¶ 7.

12. The police were in the building in response to a radio run which they received earlier that evening, reporting disorderly conduct. See Complaint ("Compl.") Exhibit B, ¶ 2(a).

13. More than seven hours after the arrest of Mr. Oppong, statements were obtained after he had signed a Miranda waiver, however, the police continued to question him even after he advised them that he was represented by an attorney and that he no longer wished to speak with them until his attorney was present. Compl. ¶ 3, Aff. ¶ 8.

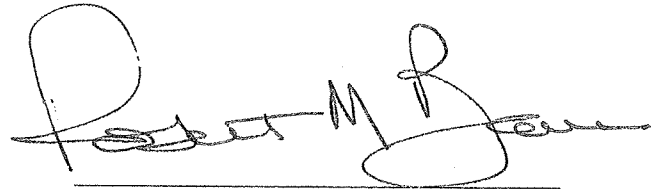
14. The officer's observations of Mr. Oppong running up the stairway was insufficient to justify an arrest and search.

15. The forcible stop of Mr. Oppong and the search occurred after he was taken into custody and were conducted without probable cause. The recovery of the firearm and subsequent

statements were the product of the initial illegal detention. Statements were also obtained in violation of his right to counsel.

**WHEREFORE**, and on the grounds set forth in the attached Memorandum of Law, it is respectfully requested that this Court enter an Order suppressing physical evidence and statements obtained in violation of the Fourth Amendment and Fifth Amendments to the United States Constitution; or in the alternative, grant a hearing on the issues raised, and any further relief as the Court deems just and proper.

Dated: New York, New York  
May 5, 2008

A handwritten signature in black ink, appearing to read "Robert M. Baum", written over a horizontal line.

ROBERT M. BAUM, ESQ.